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13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 IN RE TRANSPACIFIC PASSENGER  
 17 AIR TRANSPORTATION  
 18 ANTITRUST  
 19 LITIGATION

20 This Document Relates to:  
 21 ALL ACTIONS

22 File No. 3:07-cv-05634-CRB

23 MDL No. 1913

24 **STATEMENT OF INTEREST OF THE  
 25 UNITED STATES OF AMERICA**

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 27 The United States provides this Statement in response to the Court's letter dated  
 28 December 14, 2010 to the State Department Legal Adviser and pursuant to the United States'  
 29 statutory authority set forth in 28 U.S.C. § 517.<sup>1</sup> The United States appreciates the  
 30 opportunity to provide its views on this matter.

31 The Supreme Court has described the requirements of the act of state doctrine. The  
 32 act of state doctrine applies to require dismissal of a case when a court in the United States  
 33 would be required "to declare invalid the official act of a foreign sovereign performed within  
 34 its own territory." *Environmental Tectonics v. Kirkpatrick*, 493 U.S. 400, 405 (1990). As the  
 35 Supreme Court stated in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428 (1964),

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 37 <sup>1</sup> 28 U.S.C. § 517 provides that: "The Solicitor General, or any officer of the Department of  
 38 Justice, may be sent by the Attorney General to any State or district in the United States to attend to the  
 39 interests of the United States in a suit pending in a court of the United States, or in a court of a State, or  
 40 to attend to any other interest of the United States."

1 “rather than laying down or reaffirming an inflexible and all-encompassing rule in this case,  
 2 we decide only that the (Judicial Branch) will not examine the validity of a [sovereign action]  
 3 . . . within its own territory by a foreign sovereign government . . . in the absence of a treaty  
 4 or other unambiguous agreement regarding controlling legal principles . . . .” Exceptions to  
 5 the doctrine may apply in some contexts. The application of these principles in any given  
 6 case will turn on the elements of particular claims and defenses at issue as well as the  
 7 particular factual findings of the court. At present, the United States is not in a position to  
 8 express its views on whether a ruling in this matter would implicate the act of state doctrine.

9       Fact-finding by a court may cast light on whether the prerequisites of the act of state  
 10 doctrine are present (e.g., whether the court must decide the validity of an official act,  
 11 whether the relevant acts taken are “sovereign” acts, and whether the territorial requirements  
 12 are met) and whether any exceptions to the act of state doctrine apply.

13       The United States appreciates the Court’s consideration and its invitation to submit  
 14 views in this matter.

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16       January 21, 2011

Respectfully submitted,

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